

FILED

WILLIAM JOHN DAUGHTERY

F-79985 CHUCKAWA VALLEY STATE PRISON MAY -6 PM 2:52

P.O. Box 2349/DIO-1104P

CLERK US DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

BLYTHE, CA. 92226

BY Bm DEPUTY

UNITED STATES DISTRICT COURT

NUNC PRO TUNC

SOUTHERN DISTRICT OF CALIFORNIA

MAY -2 2008

WILLIAM JOHN DAUGHTERY, CDER

F-79985,

PLAINTIFF,

V.

DENNIS WILSON, SANDIEGO POLICE OFFICER;

ESMERALDA TAGABAN, SANDIEGO POLICE

OFFICER; SERGEANT GRIFFIN; DETECTIVE

LEMUS,

DEFENDANTS.

CASE NO. 08 CV 0408-WQH(BLM)

EX PARTE MOTION FOR

RECONSIDERATION OF APPOINTMENT

OF COUNSEL AND REVERSAL

OF THE ORDER DENYING

REQUEST FOR APPOINTMENT

OF COUNSEL [DOC. NO 13]

DATED: 29 APRIL 2008

ON APRIL 23, 2008, UNITED STATES MAGISTRATE JUDGE

BARBARA L. MAJOR DENIED REQUEST BY PLAINTIFF FOR

APPOINTMENT OF COUNSEL PURSUANT 28 U.S.C. § 1915(e)(1),

(DOC. NO. 13).

THE MAGISTRATE CITED INSUFFICIENT SHOWING OF "EXCEPTIONAL"

CIRCUMSTANCES "NECESSITATING COUNSEL'S ASSISTANCE."

I DO NOT APPEAL THE RULING, BUT INSTEAD PLEAD

RECONSIDERATION BASED UPON THE FOLLOWING EXPOSITION

OF RELEVANT FACTS SUPPORTING A GRANT THAT

WOULD BE IN THE INTERESTS OF JUSTICE AS WELL AS

SATISFYING THE STATUTORY REQUIREMENTS.

1 EX PARTE MOTION FOR RECONSIDERATION OF APPOINTMENT
2 OF COUNSEL IN CIVIL RIGHTS CASE NO. 08CV0408-WQH
3 (BLM)

4 THE MAGISTRATE RIGHTLY DEMONSTRATED THE DISCRETIONARY
5 AUTHORITY GOVERNING THE RULING ON THE MOTION AND ALSO
6 ENUMERATED THE REQUISITES FOR GRANTING SUCH.

7 FIRST, THE QUESTION OF INDIGENCY WAS ADDRESSED (P. 2 LINE
8 # 23 THRU 28) WITHOUT CLEAR INDICATION OF PLAINTIFF HAVING
9 MET SHOWING. I STATE IN SUPPORT: ① GRANTING OF FORMA
10 PAUPERIS AFTER SUBMITTAL OF FINANCIAL STATEMENT. ② THE
11 FACT THAT I HAVE BEEN INCARCERATED SINCE MAY 2007 WITHOUT
12 EMPLOYMENT OR MEANS, AND WAS IN COUNTY JAIL FROM MARCH
13 2006 UNTIL JANUARY 2007 ALSO WITHOUT FINANCES OR EMPLOYM
14 ③ I DO NOT HAVE A PAYING PRISON JOB.

15 SECOND, THE TWO-PRONGED EVALUATION (P. 2, LINE 26-28)
16 AND P. 3, LINE 1 THRU 8 OF DENIAL ORDER) WILL BE DISCUSSED
17 ADDRESSING 'ABILITY TO ARTICULATE FACTUAL BASIS' PART
18 OF THE TEST AND THE MAGISTRATE'S CONCLUSION REGARD
19 ING FIRST, THEN THE COMPLEXITY ISSUE.

20 I. ARTICULATE AND GRASP OF CASE.
21 MAGISTRATE QUOTES AGYESMAN V. CORRECTIONS CORP OF
22 AMERICA, 390 F. 3d, 1101, 1103 (9th CIR. 2004) EXCEPTIONAL
23 CIRCUMSTANCES EVALUATION OF LIKELIHOOD OF PLAINTIFFS
24 SUCCESS ON THE MERITS (P. 2, LINE 18-19) THEN
25 STATES (P. 3, LINE 1 THRU 6) IN EFFECT: HAVING SURVIVED
26 INITIAL SCREENING, PLAINTIFF HAS ABILITY TO ARTICULATE
27 FACTUAL BASIS. CONSEQUENTLY THERE IS CONCOMITANT
28 IMPLICATION THAT SUCCESS ON THE MERITS IS PROBABLE
POSSIBLE

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EX PARTE MOTION RECONSIDERATION OF COUNSEL

I. GRASP OF CASE - CONT. - LIKELIHOOD

PLAINTIFF, SINCE HE 'HAS A GOOD CASE SO FAR' WOULD NOT SEEM TO NEED COUNSEL. PLAINTIFF CONTENDS IN EFFECT, FOR THAT VERY REASON (I.E. LIKELIHOOD OF SUCCESS) HE SORELY NEEDS ADEQUATE LEGAL ASSISTANCE. QUOTING: SPEARS V. UNITED STATES, 266 F. SUPP. 22, 25, 26 (S.D.W. Va 1967) (CITATIONS OMITTED) 'GENERAL RULE SEEMS TO BE THAT BEFORE THE COURT IS JUSTIFIED IN EXERCISING ITS DISCRETION IN FAVOR OF AN APPOINTMENT, IT MUST FIRST APPEAR THAT THE CLAIM HAS SOME MERIT IN FACT AND LAW, WERE IT OTHERWISE, THE APPOINTMENT, IN MOST INSTANCES WOULD WORK A HARDSHIP ON COUNSEL WITH NO CONCOMITANT BENEFIT TO THE PARTY REQUESTING IT "UNQUOTE"; ALSO: MACKLIN V. FREAKE (1981) (CA, 7 (IND.)) 1981 650 F. 2d 885 at 650 F. 2d 887 QUOTE: "COUNSEL IS OFTEN UNWARRANTED WHERE THE INDIGENT'S CHANCES OF SUCCESS ARE EXTREMELY SLIM;"

PLAINTIFF'S DISABILITY AND THE IMPACT ON ABILITY TO ARTICULATE REQUIRES ELUCIDATION (P 3, LINE 9-11)

PLAINTIFF HAS PHYSICAL AND MENTAL DISABILITIES, BOTH ARISING OUT OF CLAIM INCIDENT AND PRE-EXISTING.

MENTAL: DIAGNOSIS (SINCE 2003) CLINICAL DEPRESSION

① SYMPTOMS LIMITING: (LOSS OF TIME, INATTENTIVENESS, AMNESIA LIKE)

ENNUI; LISTLESSNESS, DISTRESS, DISAFFECT AND

SUICIDAL IDEATION. ② MEDICATIONS. ZOLOF: SEROTONIN REUPTAKE

INHIBITOR - CAUSE SEXUAL SIDE EFFECTS, NAUSEA, BLURRED VISION

LACK OF FOCUS AND CONCENTRATION. SEE ATTACHED IMITREX INFO.

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1 EX PARTE MOTION RECONSIDERATION OF COUNSEL

2 I (CONT.) GRASP OF CASE - ARTICULATE -

3 MEDICATION ⑧ TRAZODONE: ANXIETY: PACING

4 THOUGHTS, HOT FLASHES, DROWSINESS, 'CRAWLING SKIN'

5 EFFECT. MANIC BEHAVIOR SIDE EFFECTS, PRIAPISM.

6 OBVIOUSLY, PEAK CONCENTRATION AND RATIONAL PROCESSES

7 ARE IMPACTED IN THIS ILLNESS AND TREATMENT - COMBINED

8 WITH OTHER DEBILITIES (INCARCERATION ETC) TO BE DISCUSSED

9 ARE DELETERIOUS. I CAN'T ACT AS A NORMAL PERSON

10 CAN ACT.

11 PHYSICAL: PLAINTIFF SUFFERS PHYSICAL DEBILITIES, PRE-EXISTING

12 AND AS A RESULT OF CLAIM INCIDENT.

13 ① SPINAL INJURY: CHOKER HOLD BY POLICE DAMAGED NECK MUSCLES

14 AND DISCS, FREQUENT MIGRAINES & PAIN: MEDICATION - IMITREX

15 (SUMATRIPTAN SUCCINATE) SIDE EFFECTS: CHEST PAIN, ABDOMINAL

16 PAIN, SEROTONIN SYNDROME (SEE ATTACHED INFO SHEET) WITH

17 ZOLOFT, CONFUSION, HALLUCINATIONS ETC. IMPACT: I CAN'T

18 STUDY OR PRESENT UNDER THE INFLUENCE OF PAIN OR

19 MEDICATION. ② SEPARATED SHOULDER: POLICE TACKLE TO

20 CONCRETE CAUSED TORN ROTATOR CUFF IN LEFT SHOULDER

21 MOBILITY LIMITED: MEDICATION: TYLENOL; IBUPROFEN.

22 EFFECTS: SLEEPLESSNESS, STOMACH PAIN: IMPACT I

23 CAN'T CONCENTRATE OR MANIPULATE TYPING.

24 ③ INTERNAL BRUISING: BODY SLAM BY POLICE DAMAGED

25 INTERNAL ORGANS. ④ TESTICULAR RUPTURE: POLICE

26 KNEED (PERHAPS ACCIDENTAL) GROIN RESULTING SWOLLEN

27 EPIDIDYMIUMS ON LEFT TESTICLE. IMPACT: CONSTANT

28 PAIN: MEDICATION: TYLENOL & IBUPROFEN.

CONTINUED. PG

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EX PARTE MOTION RECONSIDERATION OF COUNSEL

I. ARTICULATE CLAIMS LIMITATIONS CONT

PHYSICAL CONTINUED

⑤ GLAUCOMA: PRE-EXISTING ^{EXCESS} EYE PRESSURE CONTROLLED
WITH MEDICATION: EYEDROPS TIMOLOL MALEATE .5%

IMPACT: EYE FATIGUE, PARTIAL BLINDNESS. HEADACHES.

MAGISTRATE REQUIRES DESCRIPTION OF DOCUMENTS
NECESSARY (P. 3, LINE 11 & 12) AND WHY INCARCERATION
PREVENT AMASSING AND PROCESSING WORK PRODUCT.

THE FOLLOWING ADDRESSES: ① DOCUMENTS ② COMPLEXITY

③ INCARCERATION ④ DISCOVERY OF EVIDENCE + WITNESSES

⑤ ALL THINGS INACCESSIBLE TO IMPRISONED ⑥ 'EXCEPTIONAL'
IN TOTALITY AND CONCLUSION.

II. COMPLEXITY AND WHAT I CAN'T DO

FROM JAIL

A. Documents: ① I NEED POLICE ~~REPORTS~~ ^{CAL EVIDENCE CODE} OF
INCIDENT: PURPOSE ~~BE~~ 1046 REQUIREMENT FOR

PITCHES REQUEST: CITY OF SANTA CRUZ, 260 CAL RPTER
520. (1989) 49 CAL 3d 74 at P. 8586 AND

HERRERA V. SUPERIOR COURT (1985). SIMILAR PAST

MISCONDUCT (CAL EVIDENCE CODE: 1043.(b)(2,3), 1045

CAL. EVIDENCE, § 1040, DIV. 8, CH. 4 PARA 17 CIVIL RIGHTS

ACTIONS: MARTINEZ V. CITY OF STOCKTON, E.D. CAL.

1990, 132 F.R.D. 677, AFFIRMED 12 F.3d 1107

PROPENSITY TO USE EXCESSIVE FORCE: PEO. V MUNICIPAL

COURT, CITY AND COUNTY OF SAN FRANCISCO (APP 1 DIST 1980)

162 CAL RPTER 347, 102 CAL APP 3d 181

§ 1045 EVIDENCE CODE.

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EX PARTE MOTION RECONSIDERATION OF COUNSEL

II. Complexity and Documents

PLAINTIFFS' BURDEN IS NOT PROVING SHOCK THE
 CONSCIENCE STANDARD OF ROCHIN BUT 'REASONABLENESS'
 DOCTRINE OF 4TH AMENDMENT APPLICABLE TO STATES
 THROUGH THE 14TH AMENDMENT U.S. CONSTITUTION. MATERIALS
 PC. 1101(B) AND (C) AND SECTION 352 INTENT AND (PITCHES)
 MOTIVE FOR MISCONDUCT BY OFFICERS, HAS TO BE
 OBTAINED. EXPERT WITNESS ON POLICE PROCEDURE
 NECESSARY TO SHOW 'UNREASON' OF DETAINING AND
 ASSAULTING PERSON IN GREEN JACKET WHEN
 OFFICER WAS ORDERED TO STOP PERSON IN BLACK ^{NOTES}
 OR BLUE JACKET. ③ A 'TACTICAL TAPE' - A RECORDING
 OF DRUG STING ④ STATES BLACK ~~OR~~ JACKET SUSPECT.
 ⑤ STATES 'WE LOST SIGHT OF HIM' ⑥ DOES NOT
 DESCRIBE SUSPECT AS WEARING GLASSES IN ADDITION
 TO BLACK JACKET. (PLAINTIFF WAS WEARING GLASSES
 AND GREEN JACKET, 2 BLOCKS AWAY) ⑦ STATES 'DETAIN
 EVERYBODY AT THAT CORNER' (INDICATING MANY PEOPLE
 AT SCENE OF TRANSACTION, OTHER POSSIBLE SUSPECTS.
 IN AREA BESIDES PLAINTIFF). ^{NO} INFORMATION TO ESTAB.
 SUFF. CAUSE ~~FOR~~ PROBABLE CAUSE.

⑧ WITNESSES: ① RONALD TYSON; IN ARRESTING PATROL CAR.
 WITNESSED ALL FROM '11 ONE FOOT' AWAY WHILE DETAINED IN
 BACK SEAT OF WILSON'S CAR. TYSON IS IN PRISON. UNKNOWN
 LOCATION. HE TESTIFIED AT A 1538.5 SUPPRESSION HEARING.
 ② ROBERT MONTGOMERY; BACKSEAT PRISONER; WITNESSED (TRIAL)
 FROM 15 FEET, BEATING BY TAGABAN. FROM TAGABAN'S
 SQUAD CAR, ON PROBATION SOMEWHERE IN SAN DIEGO

* NOTE: LING 12, ^{SUPRA}
 PED. V PRICE (1991) 1 CAL 4TH 324, 409
 CITING PED. V DUNCAN (1986) 42 CAL 3D 91, 97
 PED. V. LEYBA (1981) 29 CAL 3D 571, 596-597

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EX PARTE MOTION FOR RECONSIDERATION OF COUNSEL

II. COMPLEXITY AND DOCUMENTS - WITNESSES

① WITNESSES (CONT.) ALL OFFICERS INVOLVED —

I HAVE DIFFICULTY SERVING SUBPOENA AND SUMMONS BECAUSE BADGE NUMBER AND CORRECT NAMES ARE UNAVAILABLE. (PRISON DOES NOT ALLOW TELEPHONE BOOKS.) I SWEAR THIS IS TRUE.

① EXHIBITS: ① GREEN COAT WORN BY PLAINTIFF TO ILLUSTRATE NOT BLACK: IS IN POSSESSION OF FORMER TRIAL COUNSEL AND MUST BE OBTAINED TO SHOW NOT 'BLACK OR BLUE'. (~~BLUE~~ ^{BLACK} SUSPECT WORE CLOTHING)

② SEVERAL PHOTOS OF BEATEN AND BRUISED PLAINTIFF

③ MEDICAL RECORDS: ① JAIL MEDICAL AND PSYCHOLOGICAL SHOWING IMMEDIATE OUTCRY AND EXTENT OF INJURIES.

② CIVILIAN FOLLOW-UP MEDICAL EVALUATIONS ③ PRISON

MEDICAL AND PSYCH. EVALUATION TO PROVE INJURY
PRISON WILL NOT RELEASE MEDICAL/PSYCH RECORDS TO AN INMATE AS MATTER OF POLICY.

④ OTHER DOCUMENTS: ALL TRIAL TRANSCRIPTS AND ALL OF DEFENSE ATTORNEYS RECORDS FROM CRIMINAL TRIAL. I NEED FOR CONTRADICTORY STATEMENTS / IMPROACHMENT PRIOR TESTIMONY. I CANNOT LOCATE OFFICER WILSON (SEE ENCLOSED SUMMONS MARSHALS FORMS)

⑤ HOW PRISON PREVENT (p. 3 - LINES 13-14-15) EFFECTIVE PURSUIT OF CLAIM: ① FREQUENT (LOCK-DOWN) SEE ATTACHED NEWS AND MEMOS, HEALTH AND SECURITY REASONS.

② LIMITED LIBRARY HOURS: 1 PM TO 300 PM 4 DAYS A WEEK. 6 MAX LIMIT. (PRIORITY FOR COURT DEADLINES)

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EX PARTE MOTION FOR RECONSIDERATION OF COUNSEL

COMPLEXITY AND DOCUMENTS - PRISON

(A) PRISON (CONT.) PRISON HAS NO TELEPHONE BOOKS
AS A MATTER OF POLICY. (CONTACT CHIEF LIBRARIAN
CHUCKAWALLA PRISON)

THE COMPLEXITY ARISES IN THE QUESTION:

HOW DOES A PERSON DENIED ACCESS TO OUTSIDE COMMUNICATION

(TELEPHONES ARE COLLECT ONLY, NO ONE ACCEPTS CHARGES)

CONTACT AN EXPERT WITNESS (NO PHONE BOOK OR LISTS),^{NO} INTERNET;

WITH MENTAL AND PHYSICAL IMPAIRMENT THINK OF

COGENT ARGUMENT AND RESEARCH FACTS WITH

LITTLE ACCESS TO MATERIALS^{NO TYPEWRITER/COMPUTERS}, LOCATE WITNESSES

THAT ARE LOST IN PRISON SYSTEM AND SUBPOENA THEM,

FIND PROBATIONER WITNESSES, LOCATE POLICE THAT ARE

MOVING FROM SOB TO SOB AND HAVE UNLISTED PHONE

AND ADDRESS INFO. AND OTHER IDENTITY PROTECTIONS,

PROVE THAT POLICE ACTED UNREASONABLY WHEN HE

IS REDUCED TO ACCUSING OFFICERS WITHOUT ANY OF THE

ABOVE ITEMS AND THERE ARE SEVERAL OF THEM AND

ONLY HIMSELF TO CONTEST CITY ATTORNEYS?

III CONCLUSION

PETITIONER IS A MENTALLY, PHYSICALLY LIMITED

PERSON, INCARCERATED WITH SEVERELY LIMITED

RESOURCES, IS INDIGENT, WITH INSUFFICIENT GRASP

OF HIS CASE; INADEQUATE ABILITY TO ARTICULATE

THE FACTUAL BASIS OF HIS CLAIM, HAS A LIKELIHOOD

OF SUCCESS ON THE MERITS AND HAS COMPLEX (NOT UNIQUE)

LEGAL ISSUES INVOLVED, NEEDS DOCUMENTS

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III. CONCLUSION (cont)

AND MATERIAL AND WITNESSES (PERCIPIENT AND
EXPERT) THAT ARE BEYOND HIS REACH; NEEDS
TO ASSEMBLE A COHERENT ATTACK ON THE
CREDIBILITY OF DEFENDANTS WITH NO LEGAL TRAINING
OR EDUCATION. THE TOTALITY OF THE CIRCUMSTANCES
CONSIDERED ENMASS DO INDICED CONSTITUTE
SUFFICIENT GROUNDS FOR A FINDING OF EXCEPTIONAL
CIRCUMSTANCES AND MERITS THE EXERCISE OF
THE DISCRETIONARY POWER TO REQUEST THAT
AN ATTORNEY REPRESENT INDIGENT CIVIL LITIGANT.
DILLON V. UNITED STATES, 307 F.2d 445, 447
9th CIR. 1962) QUOTE: THE QUESTION IS HOW BADLY
THE PRISONER NEEDED HELP, THE SERIOUSNESS OF
THE PROBLEM (AT 307 F.2d 450 [6]) "MUST
BE JUDGED FROM HIS POINT OF VIEW." THAT WHICH IS
SIMPLE, ORDERLY AND NECESSARY TO THE LAUNGER AS
THE SUPREME COURT HAS POINTED OUT, TO THE UNTRAINED
LAYMAN MAY APPEAR INTRICATE COMPLEX AND
MYSTERIOUS - RESOLUTION OF ISSUE REQUIRED DEVELOPMENT
OF EVIDENCE RELATING TO THE JUDGE'S PRACTICE... THE
KNOWLEDGE AND UNDERSTANDING OF THE PRINCIPALS [IN THIS
CLAIM KNOWLEDGE OF ARRESTING OFFICER, I.E. DID HE KNOW ENOUGH TO
STOP, LET ALONG ASSAULT PLAINTIFF] AND WHAT ACTUALLY TRANSPIRED
AT A SERIES OF CONFERENCES [IN PRESENT CASE, WHAT
HAPPENED AT P.C. 1538.5 HEARING? WHY WAS PITCHESS
GRANTED?] HELD OVER A PERIOD OF SIX WEEKS

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EX PARTE MOTION FOR RECONSIDERATION OF COUNSEL

III. CONCLUSION (CONT.)

DILLON V. U.S. (CONT.)

OR MORE INVOLVING POSSIBLY A DOZEN ^{IN PRESENT CASE} OFFICERS:

WILSON, TABABAN, LEMUS, GRIFFIN, MR. TYSON, MR.

MONTGOMERY, JUDGE KENNEDY (1538.5), JUDGE

SMYTH (TRIAL, CRIMINAL), PLAINTIFF, MENTAL HEALTH

AND JAIL DOCTORS AND CLINICIANS, EXPERT WITNESSES]

PERSONS, MOST OF WHOM WERE LAWYERS OR

OFFICERS. IT IS UNLIKELY THAT A LAYMAN COULD

PROPERLY INVESTIGATE THE PROBLEMS PRESENTED BY

APPELLANT'S MOTION EVEN IF HE WERE NOT CONFINED

TO PRISON OR CONSTANTLY UNDER GUARD, AND IT

IS CLEAR A LAYMAN COULD NOT ORGANIZE AND

PRESENT THE EVIDENCE ON SUCH ISSUES IN A

COURT ROOM; PARTICULARLY WHEN HE HIMSELF WOULD

BE A PARTICIPANT. 'UNQUOTE': DILLON V. U.S. SUPRA

THE PLAINTIFF HAS RELIED ON A COALITION OF 'JAILHOUSE

LAWYERS' (ASSEMBLED ONE-TIME ONLY) TO PREPARE THIS

MOTION FOR RECONSIDERATION FOR APPOINTMENT OF COUNSEL

AS A FAVOR TO AN 'UNFORTUNATE' VICTIM. PLAINTIFF CAN

NOT AFFORD 'JAILHOUSE LAWYER' EITHER. A LIST OF DOCTORS

IS APPENDED TO THIS MOTION WITH OTHER EXHIBITS SUPRA.

FOR FORGOING REASONS, FIND PLAINTIFF HAS MET

REQUISITE "EXCEPTIONAL CIRCUMSTANCES" AND GRANT

MOTION FOR RECONSIDERATION AND VACATE ORDER TO

DENY APPOINTMENT OF COUNSEL. Respectfully,

COPY TO: CITY ATTORNEYS

WILLIAM DAUGHTERY
PLAINTIFFCOUNSEL FOR DEFENDANTS
1200 3RD AVENUE
SAN DIEGO, CA 92101

(BY MAIL)

29 APRIL 2008

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1 EX PARTE MOTION for RECONSIDERATION & APPOINTMENT of COUNSEL
 2 LIST OF DOCTORS

3
 4 MENTAL HEALTH PROFESSIONALS

5 DR. DONNA MILLS ① ALTA CROWELL CENTER

6 531 16TH AVE SD. 92101 (619) 233-3432

7 ② ISIS HOUSE

8 IMPERIAL BEACH, CA.

9 ③ NEW VISTAS

10 734 10TH AVE SD. 92101 (619) 239-4663

11 ④ SARY BARRETO CENTER

12 2865 LOGAN AVE SD 92113 (619) 232-4357

13 DR. JORGE NARANJO 1173 FRONT ST. SD. CA. 92101 (619) 615-2944

14 GIL TAPIA 1173 FRONT ST. SD. 92101 (619) 615-2737

15 DR. PRITI BHATTI, SCRIPS MERCY CLINIC SD. CA 92104

16 4077 5TH AVE (619) 260-7022

17 SD. COUNTY MENTAL HEALTH ROSECRANS ST. SD. 92111

18 VISTA COUNTY JAIL PSYCH. VISTA, CA

19 GEORGE BAILEY COUNTY JAIL, OTAY MESA, S.D. CA.

20 PHYSICAL HEALTH.

21 DR. NEIL CHOPIN HILLCREST S.D. 92104

22 DR. PRITI BHATTI 4077 5TH AVE (619) 260-7022

23 SD. COUNTY JAIL CENTRAL 1173 FRONT ST.

24 GEORGE BAILEY COUNTY JAIL ALTA ROAD, OTAY MESA S.D.

25 CHUCKAWALLA VALLEY PRISON BLYTHE, CA

26 RICHARD DONOVAN PRISON ALTA ROAD OTAY MESA S.D. CA.

27

28

WCL
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EX PARTE MOTION FOR RECONSIDERATION / APPOINTMENT COUNSEL
 POINTS AND AUTHORITIES

PITCHESS V. SUPREME COURT (1974) 11 CAL 3d 531, 113 CAL

RPTR 897, 522 P 2d 305

CITY OF SANTA CRUZ 49 CAL 3d 74 AT P. 8586, 260

CAL. RPTR. 520 (1989)

CALIFORNIA EVIDENCE CODE SECTIONS: 1040, 1043(b), (2,3)

1045, 1046.

MARTINEZ V. CITY OF STOCKTON, E. D. CAL 1990, 132 F.R.D 677

AFFIRMED 12 F. 3d 1107

CAL. PENAL CODE SECTION 915

MACKLIN V. FREAKER (CA. 7 (IND.) 1981, 650 F. 2d 885

SPEARS V. U.S., 266 F. SUPP. 22, 25, 26 (S.D.W. Va. 1967)

DILLON V. U.S., 307 F. 2d 445, 447 (9th CIR. 1962)

PEO. V. PRICE (1991) 1 CAL 4th 324, 409 CITING PEO. V. DUNCAN

(1986) 42 CAL 3d 91, 97; PEO. V. LEYBA (1981) 29 CAL 3d 591, 596-597

GRAHAM V. CONNOR 490 U.S. 386, 395, 109 S. Ct 1865

871, 104 L. Ed 2d 443 (1989)

AGYEMAN V. CORRECTIONS CORP OF AMERICA, 390 F. 3d 1101,

1103, (9th CIR. 2004), QUOTING WILBORN V. ESCALDERON, 789

F 2d 1328, 1331 (9th CIR. 1986)

U.S. (28) SECTION 1915(c)(1) / 28 USC § 1915(e)(1)

U.S. V. GIULIANI, MD. ILL 1984, 581 F. SUPP 212

U.S. V. BOWLES CA. 5 (Ga.) 1980, 625 F. 2d 526

U.S. V. HOLLOWAY (D. KAN. 1995) 906 F. SUPP. 1437

PEO. V. BRAMONTO (1975) 12 CAL. 3d 528, ~~12 CAL. 3d 528~~

William Dang Herry
 Case No. 08CV0408-WQH (BLM)
 29 April 2008

Information for the Patient IMITREX® (sumatriptan succinate) Tablets

Please read this leaflet carefully before you take IMITREX Tablets. This provides a summary of the information available on your medicine. Please do not throw away this leaflet until you have finished your medicine. You may need to read this leaflet again. This leaflet does not contain all the information on IMITREX Tablets. For further information or advice, ask your doctor or pharmacist.

Information About Your Medicine:

The name of your medicine is IMITREX (sumatriptan succinate) Tablets. It can be obtained only by prescription from your doctor. The decision to use IMITREX Tablets is one that you and your doctor should make jointly, taking into account your individual preferences and medical circumstances. If you have risk factors for heart disease (such as high blood pressure, high cholesterol, obesity, diabetes, smoking, strong family history of heart disease, or you are postmenopausal or a male over 40 years of age), you should tell your doctor, who should evaluate you for heart disease in order to determine if IMITREX is appropriate for you. Although the vast majority of those who have taken IMITREX have not experienced any significant side effects, some individuals have experienced serious heart problems and, rarely, considering the extensiveness of IMITREX use worldwide, deaths have been reported. In all but a few instances, however, serious problems occurred in people with known heart disease and it was not clear whether IMITREX was a contributory factor in these deaths.

1. The Purpose of Your Medicine:

IMITREX Tablets are intended to relieve your migraine, but not to prevent or reduce the number of attacks you experience. Use IMITREX Tablets only to treat an actual migraine attack.

2. Important Questions to Consider Before Taking IMITREX Tablets:

If the answer to any of the following questions is YES or if you do not know the answer, then please discuss it with your doctor before you use IMITREX Tablets.

- ◆ Are you pregnant? Do you think you might be pregnant? Are you trying to become pregnant? Are you using inadequate contraception? Are you breastfeeding?
 - ◆ Do you have any chest pain, heart disease, shortness of breath, or irregular heartbeats? Have you had a heart attack?
 - ◆ Do you have risk factors for heart disease (such as high blood pressure, high cholesterol, obesity, diabetes, smoking, strong family history of heart disease, or you are postmenopausal or a male over 40 years of age)?
 - ◆ Have you had a stroke, transient ischemic attacks (TIAs), or Raynaud syndrome?
 - ◆ Do you have high blood pressure?
 - ◆ Have you ever had to stop taking this or any other medicine because of an allergy or other problems?
 - ◆ Are you taking any other migraine medicines, including other 5-HT₁ agonists or any other medicines containing ergotamine, dihydroergotamine, or methysergide?
 - ◆ Are you taking any medicine for depression such as monoamine oxidase inhibitors, selective serotonin reuptake inhibitors (SSRIs), or serotonin norepinephrine reuptake inhibitors (SNRIs)?
 - ◆ Have you had, or do you have, any disease of the liver or kidney?
 - ◆ Have you had, or do you have, epilepsy or seizures?
 - ◆ Is this headache different from your usual migraine attacks?
- Remember, if you answered YES to any of the above questions, then discuss it with your doctor.



(sumatriptan succinate)
IMITREX

LL6P0000000001

Information for the Patient
IMITREX[®] (sumatriptan succinate) Tablets
(cont)

contraception, unless you have discussed this with your doctor.

4. How to Use IMITREX Tablets:

For adults, the usual dose is a single tablet taken whole with water or other fluids. Do not split tablets.

A second tablet may be taken if your symptoms of migraine come back or if you have a partial response to the initial dose, but not sooner than 2 hours following the first tablet. For a given attack, if you have no response to the first tablet, do not take a second tablet without first consulting with your doctor. Do not take more than a total of 200 mg of IMITREX Tablets in any 24-hour period. The safety of treating an average of more than 4 headaches in a 30-day period has not been established.

5. Side Effects to Watch for:

- ◆ Some patients experience pain or tightness in the chest or throat when using IMITREX Tablets. If this happens to you, then discuss it with your doctor before using any more IMITREX Tablets. If the chest pain is severe or does not go away, call your doctor immediately.
 - ◆ If you have sudden and/or severe abdominal pain following IMITREX Tablets, call your doctor immediately.
 - ◆ Some people may have a reaction called serotonin syndrome when they use certain types of antidepressants (SSRIs or SNRIs), while taking IMITREX Tablets. Symptoms may include confusion, hallucinations, fast heart beat, feeling faint, fever, sweating, muscle spasms, difficulty walking, and/or diarrhea. Call your doctor immediately if you have any of these symptoms after taking IMITREX Tablets.
 - ◆ Shortness of breath; wheeziness; heart throbbing; swelling of eyelids, face, or lips; or a skin rash, skin lumps, or hives happens rarely. If it happens to you, then tell your doctor immediately. Do not take any more IMITREX Tablets unless your doctor tells you to do so.
 - ◆ Some people may have feelings of tingling, heat, flushing (redness of face lasting a short time), heaviness or pressure after treatment with IMITREX Tablets. A few people may feel drowsy, dizzy, tired, or sick. Tell your doctor of these symptoms at your next visit.
 - ◆ If you feel unwell in any other way or have any symptoms that you do not understand, you should contact your doctor immediately.
- 6. What to Do if an Overdose is Taken:**
- If you have taken more medicine than you have been told, contact either your doctor, hospital emergency department, or nearest poison control center immediately.
- 7. Storing Your Medicine:**
- Keep your medicine in a safe place where children cannot reach it. It may be harmful to children. Do not remove tablets from the packaging until you are ready to use them. Do not store the tablets in any other container.
- Store your medicine away from heat and light. Do not store at temperatures above 86°F (30°C), or below 36°F (2°C).
- If your medicine has expired (the expiration date is printed on the treatment pack), throw it away as instructed. If your doctor decides to stop your treatment, do not keep any leftover medicine unless your doctor tells you to. Throw away your medicine as instructed.

GSK GlaxoSmithKline

GlaxoSmithKline
Five Moore Drive, Research Triangle Park, NC 27709

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State of California

California Department of Corrections and Rehabilitation

Memorandum

Date: March 5, 2008

WILLIAM DAUGHTERY
CASE NO: 08CV0408-WQH (BLM)
APRIL 29, 2008

To : All Facility D Staff and Inmates

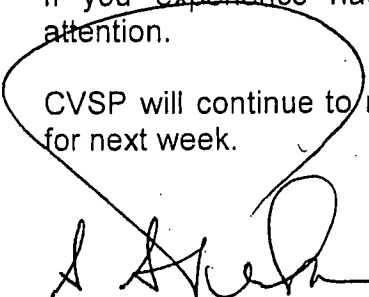
Subject: INFLUENZA EXPOSURE

Chuckawalla Valley State Prison (CVSP) is experiencing significant numbers of inmates with influenza symptoms. Most of these cases have impacted Facilities A and B. However, Facility D has a few occurrences. Based on recommendations from medical services, all visiting and volunteer activities will be cancelled for this weekend (March 8 and 9, 2008). The following are basic precautions to minimize your possible exposure to the flu.

- Practice good personal hygiene by continuously washing your hands with soap and water.
- Sanitize all areas others touch; such as showers, railings, seats etc.
- Refrain from sharing food, beverages, dishes and utensils.
- Staff should utilize gloves when conducting bed area and clothed body searches. Upon completion, immediately wash your hands with soap and water.

It is imperative every effort is made to sanitize areas with high usage. The facility sergeant will distribute bleach to each housing unit. The bleach shall be mixed with water to ensure 25 parts water to 1 part bleach solution. Wash all railings, seats, tabletops and every other high traffic areas to minimize the possible contamination. If you experience nausea, vomiting, diarrhea, chest congestion seek medical attention.

CVSP will continue to monitor and evaluate the status of the institution and visiting for next week.


A. A. TERHUNE
Facility D Captain

CASE NO. 08CV0408 - WQH (BLM)

APR 29, 2008

Massive flu outbreak hits inmates

550 SICKENED: Officials at a state prison near Blythe investigate if two deaths were caused by the illness.

BY JOSE ASBURY
AND JOHN ARBALLO JR.
THE PRESS-ENTERPRISE

Prison officials in Blythe are investigating whether the deaths of two inmates are related to a flu outbreak that has sickened nearly 550 prisoners in less than a month.

Chuckawalla Valley State Prison is in lockdown and ac-

bilitation spokesman Terry Thornton. Earlier this year, a flu outbreak affected 200 inmates at a prison in Susanville in Northern California, Thornton said.

Since Feb. 23, at least 546 of Chuckawalla's 3,100 inmates have become sick, experiencing flu-like symptoms such as fever, nausea and cold sweats, Thornton said. Ten inmates have been hospitalized, including some who were transferred to Riverside County Regional Medical

Center in Moreno Valley. The Chuckawalla prison is divided up into dormitories with only three of the facilities infected with influenza, Thornton said. Some employees are also sick.

The quarantine means no visitations will be allowed to the 1,500-acre prison and volunteers are being turned away. One inmate died March 1 and the other two days later, according to state officials. The in-

mates were not identified, but their ages were 53 and 35. Officials said they have not determined whether the deaths were caused by the flu. State officials declined to disclose where the men died.

Lilly Lopez, assistant administrator of Palo Verde Hospital in Blythe, said two inmates from Chuckawalla, including one of the ones who died, were brought to the Palo Verde emergency room.

STF FLU/AG

FLU: Illness spread to Chuckawalla Valley prison from nearby Blythe, where cases spiked recently

Blythe's population is about 22,000.

Continued from A1

gency room complaining of respiratory problems that appeared to be related to the flu. The inmate who died was admitted into the emergency room several days ago and was transferred to another hospital, where his condition began to deteriorate, Lopez said.

Another inmate arrived at the emergency room Thursday morning and was transferred later that day. Lopez said she did not know that inmate's condition but he is still alive.

Flu symptoms spiked in near-Blythe — where many of the prison employees live — in mid-February and spread to the prison, said Barbara Cole, director of Riverside County disease control.

The prison employs 400 people in Blythe, who may have

contributing factor, she said.

"The process of vaccines starts six to eight months ahead of flu season," Cole said. The World Health Organization and the Centers for Disease Control and Prevention predicts which strains of influenza will be active.

"But sometimes another virus shows up that's not included in the vaccine," Cole said. The Palo Verde Unified School District in Blythe has not seen any more cases of the flu than usual, or had a higher rate of absences, said Jacob Jensen, director of special services for the district.

"As far as I know we haven't seen any more adverse flu than is typical for this time of year," he said.

Staff writers David Olson and Shrin Parsavand contributed to this report.

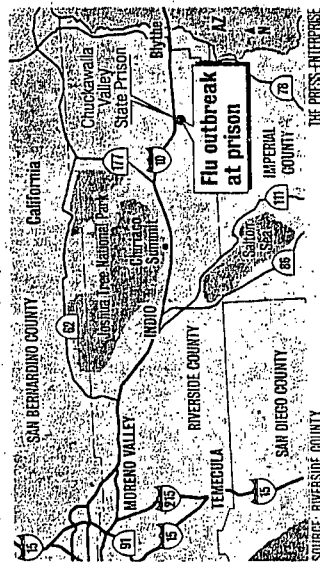
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Staff writers David Olson and Shrin Parsavand contributed to this report.



thing is to limit exposure. The inmates are very sick, but we don't want to risk other people from being exposed. We'll do everything we can to contain it."

Last year the prison experienced an outbreak of an intestinal virus.

tal's infirmary. Prison officials are sterilizing dining halls and other areas, as well as conducting wellness checks.

Inmates scheduled for parole are also being evaluated and given a list of health precautions to take before they are released.

THE DESERT SUN

CASE NO. 08CV0408-WQH (BLM)
CALIFORNIA

29 APRIL 2008

Overcrowding possibly tied to prison violence

New incidents come as officials mull early release of thousands

By DON THOMPSON
THE ASSOCIATED PRESS

SACRAMENTO — The stabbing attack on four guards at one overcrowded state prison this week and a racially sparked brawl at another mark the type of violence that guards, inmates' attorneys and Gov. Arnold Schwarzenegger have been worried about for years.

The violence comes at a critical juncture for the nation's largest state prison system.

Later this year, a panel of federal judges will consider whether the crowding has become so severe that the state must cap the inmate population or release some prisoners early. Meanwhile, lawmakers are considering a Schwarzenegger proposal to save money for the deficit-ridden state by releasing more than 20,000 inmates before their sentences end.

"For the last two years, we've said something worse than this was inevitable," said Chuck Alexander, executive vice president of the California Correctional Peace Officers Association, referring to this week's prison unrest. "It's just a matter of where and when it's going to hit. In our view, it's a precursor of what's to come."

On Thursday, two inmates armed with homemade knives attacked guards at the California Correctional Institution about 40 miles southeast of Bakersfield.

One of the guards remained hospitalized Friday with a skull fracture and stab wounds.

A second attack erupted Friday. A dozen inmates were injured during a brawl in a crowded dormitory at the California Institution for Men in Chino, about 40 miles east of Los Angeles. Prison officials described it as an attack by Hispanic inmates on white prisoners. Five were sent to hospitals, including two with puncture wounds.

"There's more violence. The prisoners are unsafe, and there is less safety for the officers, as well," said Don Specter, director of the nonprofit Prison Law Office in San Rafael.

He is among inmates' rights attorneys asking the panel of three federal judges to order the state to reduce the prisons' population. In an unusual alliance, the prison guards' union has joined the push.

Schwarzenegger opposes a federally mandated population cap. But the Republican governor is proposing the early release of some 22,000 inmates and eliminating about 4,500 prison guard positions to help shave \$400 million from the budget of the state corrections department.

Michael Bien, whose San Francisco law firm also is seeking a reduced inmate population, said the early release plan is irresponsible because guards already are working large amounts of overtime and are under mounting stress.

Schwarzenegger spokeswoman Lisa Page said the governor's plan would retain the current guard-to-

inmate ratio while freeing space for rehabilitation programs.

"We'll continue to see further reductions in our prison population as we do more to rehabilitate the state's current prisoners and make sure they stay out of prison once they're released," Page said.

In October 2006, Schwarzenegger declared an emergency to allow 8,000 inmates to be sent to private prisons in other states. It was part of an effort to relieve overcrowding that eventually led to a \$7.8-billion prison and jail building program.

At the time, he warned that California's overcrowded prisons could explode into violence, leading to the kind of riots that killed 43 in Attica, New York, in 1971.

Senate Majority Leader Gloria Romero, D-Los Angeles, faulted Schwarzenegger for not doing enough since then to reduce crowding, end labor unrest with the prison guards union and increase rehabilitation programs.

"This is the beginning of the long, hot summer," said Romero, one of the Legislature's experts on prison reform. "It does take, sadly and unfortunately, something like this to snap people's necks around to say these are the consequences of overcrowding."

California's 33 prisons have a capacity of roughly 100,000 inmates but hold about 170,000. A commission headed by Republican Gov. George Deukmejian advised Schwarzenegger in 2004 that the prisons could safely hold about 135,000.

Attorney

U.S. Department of Justice
United States Marshals Service

PROCESS RECEIPT AND RETURN

See Instructions for "Service of Process by the U.S. Marshal" on the reverse of this form.

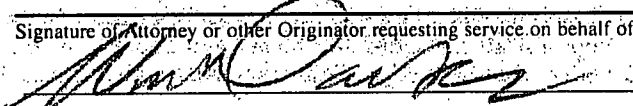
PLAINTIFF WILLIAM J. DAUGHTERY	COURT CASE NUMBER 101468
DEFENDANT DENNIS WILSON	TYPE OF PROCESS

SERVE ➔	NAME OF INDIVIDUAL, COMPANY, CORPORATION, ETC., TO SERVE OR DESCRIPTION OF PROPERTY TO SEIZE OR CONDEMN DENNIS WILSON, SAN DIEGO POLICE DEPT. TEAM 8
	ADDRESS (Street or RFD, Apartment No., City, State and ZIP Code) S.D. POLICE DEPARTMENT, INTERNAL AFFAIRS DEPT. 1400 BROADWAY, SAN DIEGO CALIFORNIA, 92101

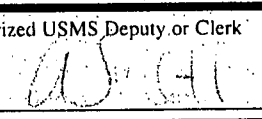
AT WILLIAM DAUGHTERY F-79955 P.O. BOX 2347/DIO-1104P BLVTHC.CA.92226	SEND NOTICE OF SERVICE COPY TO REQUESTER AT NAME AND ADDRESS BELOW:	Number of process to be served with this Form - 285 1 (ONE)
		Number of parties to be served in this case 4 (FOUR)
		Check for service on U.S.A.

SPECIAL INSTRUCTIONS OR OTHER INFORMATION THAT WILL ASSIST IN EXPEDITING SERVICE (Include Business and Alternate Addresses, All Telephone Numbers, and Estimated Times Available For Service):

- ① WILSON MAY NOW BE S.D. COUNTY SHERIFF'S DEPUTY.
② ATTORNEY WIL RUMBLE MAY HAVE CONTACT PHONE NUMBER AVAILABLE
③ AND ACCEPT A SERVICE WILSON HAS LESS THAN 2 YRS SERVICE AS DEPUTY - MAY BE USING MIDDLE NAME. WILSON IS AFRICAN AMER.

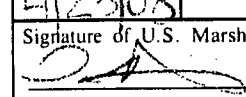
Signature of Attorney or other Originator requesting service on behalf of: 	<input checked="" type="checkbox"/> PLAINTIFF <input type="checkbox"/> DEFENDANT	TELEPHONE NUMBER	DATE 4-14-08
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SPACE BELOW FOR USE OF U.S. MARSHAL ONLY — DO NOT WRITE BELOW THIS LINE

I acknowledge receipt for the total number of process indicated. (Sign only first USM 285 if more than one USM 285 is submitted)	Total Process 1	District of Origin 98	District to Serve 98	Signature of Authorized USMS Deputy or Clerk 	Date 4/15/08
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I hereby certify and return that I ☐ have personally served, ☐ have legal evidence of service, ☐ have executed as shown in "Remarks", the process described on the individual, company, corporation, etc., at the address shown above or on the individual, company, corporation, etc., shown at the address inserted below.

☒ I hereby certify and return that I am unable to locate the individual, company, corporation, etc., named above (See remarks below)

Name and title of individual served (if not shown above)	<input type="checkbox"/> A person of suitable age and discretion then residing in the defendant's usual place of abode.
Address (complete only if different than shown above)	Date of Service 4/23/08 Time pm
	Signature of U.S. Marshal or Deputy 

Service Fee	Total Mileage Charges (including endeavors)	Forwarding Fee	Total Charges	Advance Deposits	Amount owed to U.S. Marshal or	Amount of Refund
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REMARKS:

04/2308-Returned Unexecuted. Attempted service at provided address and the Internal Affairs Department indicated that they have no Dennis Wilson employed with the S.D. Police Department

NOTE